

FILED

AUG 26 2005



UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-VS-

JOSHUA RASMUSSEN,

Defendant.

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CR 05-30051-01

OPINION AND ORDER

Defendant filed an appeal (Doc. 59) of the Magistrate's second order denying reconsideration of release. Defendant was originally detained pursuant to a writ of habeas corpus *ad prosequendum*. The writ was quashed upon the dismissal of pending state charges and the defendant filed a motion for reconsideration of release. The motion was denied by the magistrate based upon the defendant's failure to proffer an acceptable third party custodian. The defendant subsequently filed a second motion for reconsideration of release. The magistrate denied the second motion on the merits. Defendant appeals that decision pursuant to 18 U.S.C. § 3145(c).

Defendant is charged with possession with intent to distribute methamphetamine and unlawful possession of a firearm by a user of a controlled substance. Pursuant to 18 U.S.C. § 3142(e), a rebuttable presumption exists that no condition or combination of conditions will reasonably assure the safety of any other person and the community because the controlled substances offense qualifies under 18 U.S.C. § 3142(f)(1)(C) as a controlled substances offense with a maximum penalty of ten years or more. The magistrate concluded that the defendant had not rebutted the presumption.

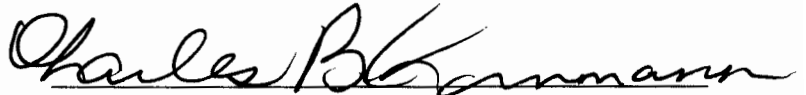
The transcripts of the detention hearings have been reviewed. I find that the magistrate correctly found that there are no conditions under which the defendant can appropriately be released.

Now, therefore,

IT IS ORDERED that the defendant's appeal (Doc. 59) is denied.

Dated this 25th day of August, 2005

BY THE COURT:

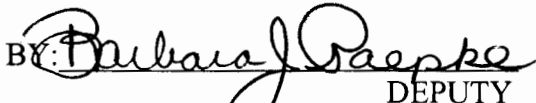


CHARLES B. KORNMANN

United States District Judge

ATTEST:

JOSEPH HAAS, CLERK

BY: 
DEPUTY
(SEAL)